

LOWER PAXTON TOWNSHIP ZONING HEARING BOARD

Meeting of January 24, 2013

Members Present

Jeffrey Staub
Watson Fisher
Sara Jane Cate
Alan Hanson

Also in Attendance

James Turner
Dianne Moran

Docket 1329

Applicant: Todd Gelbaugh, DAG, LP

Address: 4636 Jonestown Road
Harrisburg, PA 17109

Property: 4636 Jonestown Road
Harrisburg, PA 17112

Interpretation: Section 402.A.39.a – Additional requirements for outdoor recreation uses requiring minimum separation from dwellings and residential properties: “All buildings, pavilions and areas used for nighttime activities shall be a minimum of 150 feet from an existing dwelling on another lot. All parking areas shall be setback a minimum of 75 feet from any residential lot line.”

The applicant proposes to create a bumper car attraction on the properties known as 9 Care Street and 4636 Jonestown Road.

Grounds: Section 402.A.39.a of the Lower Paxton Township Zoning Ordinance pertains to this application.

Fees Paid: December 31, 2012

Property Posted: January 15, 2013

Advertisement: Appeared in The Paxton Herald on January 9, 2013 and January 14, 2013.

The hearing began at 7:05 p.m.

Mr. Turner explained that he had a procedural discussion with Mr. Ron Lucas, the attorney for the applicant, before the hearing that there may be issues for this variance that were not advertised. He noted that it was discussed, using procedures that were used at other hearings, to hear the case, conditionally vote on it, and advertised it correctly and reaffirm the decision at

the next meeting as long as there is no large dissent against the zoning. He noted if that is acceptable that would be the way to keep the project moving along without providing for another months' delay.

Mr. Staub questioned if in the event Mr. Hansen or Mr. Fisher can't be at the next meeting, would it be an issue to reaffirm the decision if we don't have a quorum. Mr. Turner noted that those present at the next meeting could act on it, but if Mr. Hansen and Mr. Fisher are available, it would be good to come next month.

Mr. Staub noted that it is customary for the Board to mark the application for variance and any site plans as exhibits and he questioned if the applicant had any problems with that. Attorney Ron Lucas answered that he had no objections

Mr. Staub swore in Ms. Dianne Moran who stated that she is the Planning and Zoning Officer for Lower Paxton Township.

Ms. Dianne Moran advised that the appropriate fees were paid on December 31, 2012. The proper advertisements appeared in The Paxton Herald on January 9, 2013 and January 16, 2013. The hearing notices were posed on January 15, 2013.

Mr. Staub questioned what ordinance this variance request was for. Ms. Moran answered Section 402.A.39.a – Additional requirements for outdoor recreation uses requiring minimum separation from dwellings and residential properties: "All buildings, pavilions and areas used for nighttime activities shall be a minimum of 150 feet from an existing dwelling on another lot. All parking areas shall be setback a minimum of 75 feet from any residential lot line."

Ms. Moran noted that the proposed location of the bumper cars site will be less than 150 feet from the nearby dwelling located at 9 and 15 Care Streets and will range as close 25 feet to 9 Care Street to 113 feet to 15 Care Street. She noted that the additional information will be provided from the applicant. Mr. Staub questioned Mr. Lucas if he would enter that information into the record. Mr. Lucas answered yes.

Mr. Staub swore in Todd Gelbaugh and Tom Wilson. Mr. Todd Gelbaugh explained that he resides at 6097 Lyters Lane, Harrisburg, PA, 17111. Mr. Tom Wilson provided a work address of 470 Friendship Road, Suite 100, Harrisburg, Pennsylvania, 17111.

Mr. Ron Lucas distributed an exhibit packet. He noted that the first item in the exhibit packet is Exhibit A-1; amendment to the request that the solicitor spoke of. He noted that he emailed it to the Zoning Officer and Mr. Turner yesterday and he spoke to Mr. Turner regarding what he previously stated and he is in agreement with proceeding in that manner.

Mr. Lucas requested an amendment to a modification to a condition of approval of the Zoning Hearing Board decision March 15, 2012. He noted that attached to Exhibit A-1 is the copy of the decision listed as Exhibit A-1a. He noted that Exhibit A-1b is the Zoning Hearing Board decision map. He noted that the map is marked to show identification. He explained that

he is requesting to amend the application to add additional dimension variances in the section involved is 803.D.4., and Section 402.D.8.c.4. He noted that those sections require that any fence be on the inside of the screen or buffer plantings at a minimum of five feet from the property or dwelling that is adjacent to the principal business over six feet in height. He noted that he is requesting variances from those sections, to allow a fence to remain on the border of the property.

Mr. Lucas noted that the request will be readvertised for a hearing to be held February 28, 2013 in order to reaffirm the decision at that time.

Mr. Lucas called Mr. Gelbaugh to go through the exhibits. He questioned if Mr. Gelbaugh was the owner and developer of a property of this application. Mr. Gelbaugh answered yes.

Mr. Lucas noted that exhibit A-1 is the amendment to the application which shows the Zoning Hearing Board decision from last March. He questioned if the Meadows was in operation at that time. Mr. Gelbaugh answered yes. Mr. Lucas questioned if it is located in the former Rossi Jewelers building. Mr. Gelbaugh answered yes.

Mr. Lucas questioned, since the March decision, what has Mr. Gelbaugh constructed on the property that has the three uses on it. Mr. Gelbaugh answered that he installed an 18-hole miniature golf course, clubhouse to store the golf clubs and balls, and five battling cages, three baseball and two softball, and a driveway and 12 additional parking spaces.

Mr. Lucas noted in the Zoning Hearing Board decision, there was a condition of approval, the third page of the decision, condition A, that required Mr. Gelbaugh to construct a six-foot privacy fence along the border with Owen and Davis properties depicted on the plan. He noted that the requested amendment is to delete the requirement of the fence along the border with the Owen property. He questioned if that is correct. Mr. Gelbaugh answered yes.

Mr. Lucas noted if we look at Exhibit A-1b, the map, it shows Route 22 or Jonestown Road at 4636, that is the address and front end of the property where it is mark. Mr. Gelbaugh answered yes. Mr. Lucas questioned if that is where the Meadows is located, the building and the front of that. Mr. Gelbaugh answered yes.

Mr. Lucas noted that he marked the Zoning Hearing Board fences; the first is on the southern wing of the property next to the Davis property. He questioned if he constructed that fence. Mr. Gelbaugh answered yes. Mr. Lucas noted that opposite that, on the property line, that fence would have been adjacent to the former Owen property. Mr. Gelbaugh answered yes. Mr. Lucas noted that property fronts on Care Street. Mr. Gelbaugh answered that was correct.

Mr. Lucas noted that the next property is known as 9 Care Street, the former Owen property. Mr. Gelbaugh answered that was correct. Mr. Lucas noted that the property further north from that is 13 Care Street; however, what is marked on the sheet is a current

fence and that is what is located on the Owen property today. Mr. Gelbaugh answered that was correct.

Mr. Lucas noted that Exhibit 2 is a copy of the deed recorded January 31, 2012, for the main 4636 Jonestown Road property. Mr. Gelbaugh answered that is correct.

Mr. Lucas questioned when Mr. Gelbaugh began and ended the construction of the mini-golf and batting cages. Mr. Gelbaugh answered he began construction in May of 2012 and opened up the golf course August 10, 2012 with the batting cages opening up two weeks later.

Mr. Lucas noted that Mr. Gelbaugh has obtained approval of the land development plan to do this. He questioned if Exhibit A-3 is a copy of a deed from Mr. Owen that you recorded June 25, 2012. Mr. Gelbaugh answered yes. Mr. Lucas noted that was the Owen property that the fence was to border but during construction you purchased his property. Mr. Gelbaugh answered that was correct. Mr. Lucas noted that the house remains on the property. Mr. Gelbaugh answered that was correct. Mr. Lucas questioned if Mr. Owen is renting the house from Mr. Gelbaugh. Mr. Gelbaugh answered yes. Mr. Lucas noted that Mr. Owen wanted to stay there and he sold the property and is staying in the house.

Mr. Lucas noted that the fence that would have bordered the Owen property, during the construction you purchased the property at 9 Care Street and you did not construct the fence bordering the Owen property. Mr. Gelbaugh answered yes.

Mr. Lucas noted instead you constructed the fence as shown where it currently is. Mr. Gelbaugh answered yes. Mr. Lucas questioned why Mr. Gelbaugh constructed the fence in that location. Mr. Gelbaugh answered that it would give better shading to the Owen property due to the way the land is sloped, which it was originally to be located behind the batting cages, but it would give him no shading from the batting cage area since the Owen home sits up on a hill and the batting cages sit down. He noted in the event that he would build something else, in the backyard of 9 Care Street, at some point like a swing set or in this case, bumper cars, he would have to accommodate that. He noted that Mr. Owen has a nice fenced in yard too.

Mr. Lucas questioned if Exhibit Six is a photograph of the rear of 9 Care Street. Mr. Gelbaugh answered yes. He questioned if it showed the fence that Mr. Gelbaugh constructed in the fall, when did you construct that. Mr. Gelbaugh answered in September 2012. Mr. Lucas noted that the right side has a portion that is lower than most of that fence. Mr. Gelbaugh answered that was already there on 13 Care Street, and his fence is located around the back of the house. Mr. Lucas questioned if the house at 13 Care Street is the next property north. Mr. Gelbaugh answered yes. Mr. Lucas noted that you constructed a six-foot PVC fence that would have bordered the Owen Property per the Zoning Hearing Board condition but instead when you purchased the property, you constructed it at the upper portion of the Owen Property adjacent to 13 Care Street. Mr. Gelbaugh answered yes.

Mr. Lucas questioned if photo Exhibit Seven shows the backyard behind the house of the 9 Care Street property. Mr. Gelbaugh answered yes. He noted over the white fence is the house

that we were talking about on 13 Care Street. Mr. Gelbaugh answered yes. Mr. Lucas noted the photo on the left, is one that shows the area behind the wooden fence is that of another building on 13 Care Street. Mr. Gelbaugh answered it is a garage. Mr. Lucas noted that it preexisted and it remains there. Mr. Gelbaugh answered yes. Mr. Lucas questioned if the white PVC fence is the one that goes north to south behind the house at 9 Care Street. Mr. Gelbaugh answered yes. Mr. Lucas noted that it provides a backyard for the house at 9 Care Street and blocks what is in the back. Mr. Gelbaugh answered yes. Mr. Lucas noted that Exhibit A.1.B shows that the fence is on 9 Care Street and it goes out towards Care Street. Mr. Gelbaugh answered yes.

Mr. Lucas noted that Mr. Owen sold the property, continues to live in the house and has a backyard behind the fence. Mr. Gelbaugh answered yes.

Mr. Lucas noted that both photos show that the property slopes up from the 4636 Jonestown Road property along Care Street to the top of the hill which is 13 Care Street. Mr. Gelbaugh answered yes.

Mr. Lucas noted that the application before the Board originally filed for both 4636 Jonestown Road and 9 Care Street, correct. Mr. Gelbaugh answered yes. Mr. Lucas noted that the idea is to combine those two properties into one property for this application. Mr. Gelbaugh answered yes. Mr. Lucas noted, during acquisition of the 9 Care Street property, Mr. Gelbaugh came up with the idea to put another recreational use on that property, and this changed the facts from what was presented to the Zoning Hearing Board last February. Mr. Gelbaugh answered yes. Mr. Lucas noted that it was a change in circumstances and he is asking the condition to be modified. Mr. Gelbaugh answered yes.

Mr. Lucas noted any adverse effect to any adjacent property at 9 Care Street would involve 13 Care Street. He questioned if that property came up for sale in the fall of 2012. Mr. Gelbaugh answered yes. Mr. Lucas questioned if the realtor approached Mr. Gelbaugh about purchasing that property. Mr. Gelbaugh answered yes. Mr. Lucas questioned if the exhibit marked as Exhibit A4, 13 Care Street shows that the deed was recorded November 9, 2012. Mr. Gelbaugh answered yes.

Mr. Lucas questioned if he had any plans to do more when the property came on the market. Mr. Gelbaugh answered yes. Mr. Lucas questioned if he is renting the houses on 9 and 13 Care Street at this time. Mr. Gelbaugh answered yes. Mr. Lucas questioned if he had any other plans for those properties today. Mr. Gelbaugh answered not currently.

Mr. Lucas noted that the second part of the amendment to the application is Section 803.D.4 which required a fence to be on the inside of any required plantings. He noted that the variance request is to leave the fence where it is along the property border bordering 13 Care Street. Mr. Gelbaugh answered that was correct. Mr. Lucas noted that the second variance is from Section 402.D 8.C.4, and that requires the fence on the inside of any buffer plantings with a minimum of five feet from the property line. He noted that the variance is to leave the fence along the property border. Mr. Gelbaugh answered that was correct.

Mr. Lucas noted that the application is a proposal to combine the two properties to have another recreational use to include bumper cars. He noted that it makes one larger property as shown on the exhibit from the tax map which is really from the original packet that was filed. Mr. Gelbaugh answered yes.

Mr. Lucas noted, looking at these properties, some are small but most are not evenly shaped. He noted that they wrap around each other. Mr. Gelbaugh answered yes.

Mr. Lucas noted you were not open that long for the season before you had to close down. Mr. Gelbaugh answered yes. He questioned how long the business was open after the August opening. Mr. Gelbaugh answered that he allowed people to miniature golf up to a month ago.

Mr. Lucas questioned if this is a family orientated recreational use. Mr. Gelbaugh answered very much so. Mr. Lucas noted that the original concept is that you are a father, and have several kids and you were looking for family entertainment for families that have kids. Mr. Gelbaugh answered absolutely. Mr. Lucas noted that it is in a commercial area of the Township. Mr. Gelbaugh answered yes.

Mr. Lucas noted that the structure for the bumper cars, the original exhibit packet had the structure showing a patch; however, Exhibit E, shows an elevation for this building, is that what you received from the manufacturer. Mr. Gelbaugh answered yes. Mr. Lucas questioned if three sides have garage doors on them. Mr. Gelbaugh answered yes. Mr. Lucas questioned if they would be open during operation. Mr. Gelbaugh answered yes. Mr. Lucas questioned if the side facing 13 Care Street has no doors on it. Mr. Gelbaugh answered yes.

Mr. Lucas noted that Exhibit D is a copy of a letter that you received in December from Amusement Products. Mr. Gelbaugh answered yes. Mr. Lucas noted that it talks about the operation of these cars. He requested Mr. Gelbaugh to describe the cars. Mr. Gelbaugh answered that they are electric, battery operated and there is no noise. He noted that it is like an inner tube and it is within a small area, not the typical bumper cars you may see at Hershey Park with the electric in the roof. He noted that it is a much smaller area and when you bump into someone it creates a spin. Ms. Cate questioned if Mr. Gelbaugh had a picture of the bumper car. Mr. Gelbaugh answered that he did and showed it to her. Mr. Fisher questioned if only one person would ride in a car. Mr. Gelbaugh answered yes, but there is a child seat that could be mounted in the front.

Mr. Lucas noted when the doors are open, it is open air when it is operational, so it could be considered outdoor but the use is really inside the walls of the building so we are not sure which one it is. Mr. Lucas questioned if a swimming pool is associated with this use. Mr. Gelbaugh answered no.

Mr. Lucas noted that you spoke to hours of operation in the application, is that your concept at this time. Mr. Gelbaugh answered yes. Mr. Lucas questioned what the hours of operation were. Mr. Gelbaugh answered that it was 10 a.m. to 11 p.m. Mr. Lucas questioned if

the fence that you installed on the northern part of the former Owen property, known as 9 Care Street borders the residential use to the north which you purchased as well as the house that you are renting on 9 Care Street property. Mr. Gelbaugh answered yes.

Mr. Lucas noted that is all the questions that he had for Mr. Gelbaugh.

Mr. Lucas called Tom Wilson. He noted that Mr. Wilson has been sworn in and provided his name and address. He questioned if he was a principal of K&W Engineers. Mr. Wilson answered yes. He questioned if he was a licensed professional engineer. Mr. Wilson answered yes. He questioned if he was a licensed professional engineer in the State of Pennsylvania. Mr. Wilson answered yes, since 1990. Mr. Lucas questioned if Exhibit A-5 is a current and accurate copy of your resume. Mr. Wilson answered yes. Mr. Lucas noted that your degree is in engineering, your license as an engineer, and you worked as an engineer for over 20 years. Mr. Wilson answered yes. Mr. Lucas questioned if Mr. Wilson has had experience with land development projects as a municipal engineer. Mr. Wilson answered yes. Mr. Lucas questioned if Mr. Wilson has done work in Lower Paxton Township. Mr. Wilson answered yes. Mr. Lucas questioned if Mr. Wilson can be recognized as an expert. Mr. Staub replied so moved.

Mr. Lucas questioned if he oversaw the preparation of the application and the drawings submitted with the application. Mr. Wilson answered yes. Mr. Lucas questioned if the variance request booklet referred to in the application, was it prepared under the direction of Mr. Wilson's office. Mr. Wilson answered yes. Mr. Lucas questioned if the aerial site plan shown as Map 3 is the GIS Map that was marked as Exhibit B to the amendment request. Mr. Wilson answered yes. Mr. Lucas noted that it shows the tax parcel from the Dauphin County tax map itself. Mr. Wilson answered yes.

Mr. Lucas noted that the separation diagram was in the last folder packet in the application. Mr. Wilson answered yes. Mr. Lucas questioned if you have taken a copy of that and put it on a board. Mr. Wilson answered yes, stating that he highlighted it. Mr. Lucas requested Mr. Wilson to come to the Board, providing copies to the Zoning Hearing Board members, marking it Exhibit A-8. He questioned Mr. Wilson is this was the diagram that is in the application. Mr. Wilson answered yes. Mr. Lucas questioned what changes have you made to this. Mr. Wilson answered that he highlighted in yellow the 150 foot setback area for the outdoor recreation bumper car pad site to identify the separation from residential uses. He noted he highlighted in green the 75 foot setback for the parking lot area. Mr. Lucas noted for the application, the property is zoned CG, Commercial General. Mr. Wilson answered yes. Mr. Lucas noted that the plan envisions a combination of two lots, 9 Care Street with 4636 Jonestown Road. Mr. Wilson answered yes. Mr. Lucas noted that they will be consolidated with the land development plan for one property. Mr. Wilson answered yes.

Mr. Lucas noted that uses for the bumper cars, whether it is an outdoor commercial recreational use or commercial indoor recreational use, because of the doors, we are not exactly sure what it is, are both permitted uses in a CG District. Mr. Wilson answered yes.

Mr. Lucas noted that he thinks the definition of building includes the bumper car structure because it has a roof and walls. Mr. Wilson answered yes.

Mr. Lucas noted that the design criterion for this falls under Section 402.A.39, that has criteria for recreational use in the Township. Mr. Wilson answered yes. Mr. Lucas noted that subsection A is where we deal with the separation requirement of 150 feet. He requested Mr. Wilson to explain that. Mr. Wilson explained that outdoor recreation has to be separated by a minimum of 150 feet from residential use. He noted that based on the configuration of the lot, it makes it impossible as there are existing non-conforming uses, the residential uses adjacent to his property that prohibit that development from occurring.

Mr. Lucas noted that both sides of Care Street in this area are zoned CG. Mr. Wilson answered yes. He noted that we talked about the Davis property that is beyond 150 feet. Mr. Wilson answered yes. Mr. Lucas noted that it is a non-conforming dwelling. Mr. Wilson answered yes. Mr. Lucas noted across Care Street, there are other dwellings and the 150 feet barely touches the property but it doesn't touch the dwellings. Mr. Wilson answered yes. Mr. Lucas noted that they are non-conforming uses. Mr. Wilson answered yes. Mr. Lucas noted that the Owen house that remains on 9 Care Street and the house on 13 Care Street are both non-conforming uses. Mr. Wilson answered yes. Mr. Lucas noted that the dwellings on 13 Care Street, to the north are non-conforming uses. Mr. Wilson answered yes. Mr. Lucas noted that everything to the east of this is offices or commercial uses. Mr. Wilson answered yes, noting it is offices, or restaurants.

Mr. Lucas noted that the yellow lines on the map show the bumper car pad site where the building will be located. Mr. Wilson answered yes. Mr. Lucas noted that it will be a nighttime use and this activity would be open until 11 p.m. Mr. Wilson answered yes.

Mr. Lucas noted that the other variance request from the bumper car structure is the parking issue. He noted that it is shown in green and he requested Mr. Wilson to explain that. Mr. Wilson noted that the ordinance requires that a parking lot be set back a minimum of 75 feet from any residential use. He noted with the configuration of the lot it was impossible to provide the parking and continue to meet the 75 feet requirement from any residential use.

Mr. Lucas noted that this photograph does not show the current conditions of the miniature golf and the batting cages. Mr. Wilson answered yes. Mr. Lucas noted that there is parking associated with that. Mr. Wilson answered yes. Mr. Lucas noted that the parking lot is with the new driveway off of Care Street. Mr. Wilson answered yes. Mr. Lucas noted that it show a parking lot next to the bumper car pad site. Mr. Wilson answered yes.

Mr. Lucas questioned how the bumper car pad site fits into the topography of the lot. Mr. Wilson noted that it must be flat, and the lot is sloped, with a higher elevation to the north of the property cutting in a level area for the bumper pad site. Mr. Lucas noted that this is being cut into the slope and it means that there will be a slope embankment behind it to the north. Mr. Wilson answered that there would be approximately a 12 foot embankment up to the adjacent properties and that residential use would have a 12 foot vertical elevation. Mr. Lucas noted that

it is not a level area, but what about the parking lot. Mr. Wilson answered that the parking lot will be relatively level as well, and will not exceed a 5% slope, using a 4.5% slope meeting the ADA requirement and have handicap accessibility to the facility. He noted that it will be a level area with the residential uses to the north being elevated.

Mr. Lucas noted that we talked about the 150 foot requirement, nighttime activity, the 75 foot requirement to the residential property, noting the setback touches the residential property, at 9 Care Street where the use is or the parking lot that touches 13 Care Street which Mr. Gelbaugh now owns. Mr. Wilson answered yes. Mr. Lucas noted that it is close to the property line of the property across Care Street. Mr. Wilson answered yes.

Mr. Lucas noted that the other variances that were requested that we simply amended tonight is for the fence that we described which is, but let's first go to the condition or rule. He noted that the condition had been to put the fence at the border of the Owen property, but with this combination if we didn't have an issue with the fences we would have to remove it and ask the Board for a removal of that condition. He noted that the variance for the fences that Mr. Gelbaugh constructed was where he thought he could provide the best screening, technically the ordinance says on the inside of any buffer plants. Mr. Wilson stated that was correct, it should be 20 feet from the property line inside the buffer. Mr. Lucas noted that there is another requirement of a minimum five feet inside the property. Mr. Wilson stated that was correct. Mr. Lucas noted that this would be similar to what the Board directed that the fence border the old property; it is just the next property up which is the use being extended and the properties being combined. He noted if we would have combined those last year, the condition of the fence border might have been at this location. Mr. Wilson answered that is correct. Mr. Lucas noted that it would have been consistent... Mr. Wilson noted with the direction of the Meadows Mini-Golf, it provides the best visual barrier from the adjoining properties because the bumper cars would sit down significantly lower, approximately 12 feet lower than the elevation of the property line, if that fence was moved 20 feet inside the property, the fence would be at the lower elevation and you would be looking down on top of it.

Mr. Lucas noted that other than the requested variances, do you believe the design can meet all the other dimensional requirements for a recreational use be it an indoor or outdoor use for Section 402.A.39. Mr. Wilson answered yes.

Mr. Lucas noted that we discussed the odd shaped property, trying to sight things from non-conforming residential uses; the hardship for the variances, is that reflective in those types of factors or any other factors there. Mr. Wilson answered that due to the configuration of the lot, there is a hardship associated with it. Mr. Lucas noted that all the properties on Care Street were relatively small properties but by combining them we are making it one of the largest properties on Care Street. Mr. Wilson answered yes. Mr. Lucas noted as a result of the odd shaped properties the owner is not ending up with a nice rectangle. Mr. Wilson answered yes.

Mr. Lucas noted that it includes a little strip of land for 13 Care Street. Mr. Wilson noted that is 9 Care Street.

Mr. Lucas questioned if the variance would alter the character of the CG district or neighborhood. Mr. Wilson answered no, as it is commercial all around it, a tire shop, Colonial Park Mall, with significant commercial development. Mr. Lucas noted what were left on Care Street are older residential dwellings that are all non-conforming and some are being replaced by conforming uses. Mr. Wilson answered that is correct. Mr. Lucas noted in that evolution, there is going to be some issues to meet compliance and setbacks. Mr. Wilson answered yes.

Mr. Lucas noted that this is a minimum variance request in trying to keep it away from the properties across Care Street. Mr. Wilson answered yes. Mr. Lucas noted that the owner is not touching the Davis property to the south. Mr. Wilson answered yes. Mr. Lucas noted that the property most affected is 13 Care Street which the owner developed. Mr. Wilson answered yes.

Mr. Lucas noted Exhibit A6 and A7, were those taken by your firm. Mr. Wilson answered yes, that a survey was completed. Mr. Lucas questioned if they accurately reflect the conditions at that time. Mr. Weaver answered yes.

Mr. Lucas noted that was all the questions that he had.

Mr. Staub questioned if the Board had any questions for the applicant.

Mr. Hansen questioned if Mr. Gelbaugh owned 9 and 13 Care Street. Mr. Gelbaugh answered yes. Mr. Hansen questioned if 13 Care Street is occupied by a resident. Mr. Gelbaugh answered yes. Mr. Hansen questioned if 9 Care Street is occupied by a resident. Mr. Gelbaugh answered that they both are.

Mr. Hansen questioned if there is any reason the buildings were not razed. Mr. Gelbaugh noted when he first opened the Meadows in April of 2011, he had no intention of doing any of this. He noted in the summer of 2011, the Rossi location had an aggressive hillside, and he started to think of ways of making something recreational there. He thought about a swing set and then came up with the idea of a miniature golf course and a designer from New Jersey told him that there was not ample land to do a 18-hole golf course, only enough to do 9 holes. He noted at that point he approached the owner of 5 Care Street, a house that has since been demolished, and constructed the golf course and batting cages. He noted at that point he continued to look for more recreation and he decided to approach 9 Care Street, not with the intention for bumper cars, but wanting to purchase the property in the event that he decided to do something. He noted that the owner sold the property to him but wanted to stay there. He noted that he had no desire to tear down 9 Care Street as it is a very nice house and the owner is a good tenant. He noted that he had no intention to purchase 13 Care Street, but when it came up for sale, he felt it was a good investment for him to buy it. He noted that one of his sons rents that home.

Mr. Hansen questioned as far as the bumper car pad site, is there any standard size or how do you determine the size. Mr. Gelbaugh answered that the standard size for six bumper cars is 30 feet by 30 feet. He noted that he choose to do a large pad at 40 feet by 40 feet to

accommodate installing bathrooms behind it. He noted that looking at the cars in action you don't need much space but it is nice to have the space.

Mr. Hansen questioned how many cars you envision using at this site. Mr. Gelbaugh answered six cars at one time.

Mr. Hansen questioned if any repair work is needed on these cars and if so where would you be doing that. Mr. Gelbaugh answered that he has a mechanic that would do the work on site, basically repairing belts as they tear. He noted that there is not much maintenance required. Mr. Hansen questioned if any parts are environmentally sensitive that you would need to make provisions for that. Mr. Gelbaugh answered no.

Mr. Hansen questioned how you determined the hours of operation. Mr. Gelbaugh noted that the custard store's summer hours are from 11 a.m. to 11 p.m. along with the golf course but the batting cages are only open until 9:30 p.m. He noted that he wanted to keep the bumper cars open as late as he keeps the golf course and custard store open. He noted the reason the batting cages had a stipulation was due to the noise from hitting the bats, but the bumper cars make no noise at all.

Mr. Hansen questioned if the parking lot would be sufficient to handle six cars plus the number of people waiting to use it. Mr. Gelbaugh answered yes; the number of spaces he has in the lower lot exceeds what is required. Mr. Wilson noted that there is excess parking on the existing Meadows site.

Ms. Cate questioned Mr. Gelbaugh if he owned the last house listed as Cunkle. Mr. Gelbaugh answered no. Ms. Cate questioned if he planned to buy it. Mr. Gelbaugh noted that he has no plans at this time, but he talked the young fellows that live there. He noted that their grandmother owned it and they have a little smoke house connected to it, and they make their own barbecue sauce. Ms. Cate questioned if Mr. Gelbaugh had talked to the people across Care Street for what their plans are. Mr. Gelbaugh answered no.

Mr. Lucas noted if you look on the tax map, opposite 4636 Jonestown Road, the first two properties are owned by an enterprise, LLC. He noted that there is one property, but the first two residential are probably investment properties. He questioned if any of these properties are rented along Care Street. Mr. Gelbaugh answered that the first one is a rental property, and the person who lived at 5 Care Street now lives in one of the LLC properties.

Mr. Staub questioned Mr. Wilson if this was a matter of timing for the parking area setback and to a great extent the building setback of 75 feet and 150 feet. He questioned if 9 and 13 Care Street are going to be incorporated into the Meadows property by a land development plan. Mr. Wilson noted that it would only be 9 Care Street and not 13 Care Street.

Mr. Staub questioned if there is a way to move the parking lot and bumper car building to the south. Mr. Wilson answered no. Mr. Staub questioned if the plan is tight. Mr. Wilson answered yes.

Mr. Staub noted that the issue that he has with the proposal is if you are asking for a variance to construct something that is supposed to be shielded and buffered from a residential use on a separate lot, if you are granted that relief the fact remains that you are also asking for relief on the very buffer that you are supposed to be provided from the two different uses, seems to be that you want to have your cake and eat it to. He noted that the fence to the north should have plantings with it. Mr. Lucas noted that he explained the history of what happened. He noted that during construction, the 9 Care Street property was purchased, so rather than put the fence there, he put it at the next property, at the same location that it would have been against the old property, boarding it. He noted that he told him that no good deal goes undone. He put it where he would have put it against the original property only the next property up because he had purchased 9 Care Street. He noted when you look at the photographs, the property slopes up quite a bit and to put in the pad site, there is a 12 foot vertical to put it in there. He noted that he tried to shield the property at the bottom by putting the fence there. He noted that there is an argument that the fence had to be moved, it must be moved five feet in, but not 20 feet in because to border the bumper plantings, although he has not confirmed this with the zoning officer, we have not ascertained that the fence does not have to be 20 feet away, it has to be within the buffer but inside any buffer screen plantings. He suggested that it must be five feet away from the property line and when you look at the photograph and testimony it would not serve much of a purpose being further down because it is so far below the upper property, you would be able to look right over it from the house. He noted that the request is that we not put the fence up against the Owen property and instead put it against the other property and he realized in the last couple of days we probably needed a variance for that as we put it too close to the property line. He noted if it was a residential property, which it was, you can put a fence on the border as it is permitted, but he will not argue that it is non-conforming.

Mr. Staub noted that he understands what Mr. Lucas is saying and he appreciates the fact that Mr. Gelbaugh had the foresight to put the fence where it out to be but it isn't going to grow in height and the trees will. He suggested if you don't want to shift the fence five or eight feet south, put the plantings on the inside so eventually there will be the visual screen. He noted when he voted for the original variance last year, his thought was to have the combination of the fence and the plantings to shield the neighbor. Ms. Cate agreed with Mr. Staub. Mr. Gelbaugh agreed as well. Mr. Lucas noted that we should put some plantings on the inside of the fence that would eventually grow up. He suggested that it would be acceptable for his client. Mr. Gelbaugh questioned if he was talking about the area behind the bumper cars or the entire fence. Mr. Staub noted that for whatever would have to be screened. Mr. Gelbaugh noted that there are several large trees there. Mr. Staub suggested that the ordinance recognizes the existing vegetation and it counts toward the buffer. Ms. Moran answered yes.

Mr. Lucas noted if the condition could be that to develop a planting, noting if you look at Exhibit A6, the house is to the back of that property at 13 Care Street. He noted that there is a garage in the front, but if there are some tall trees to that northeast corner, it could be that a landscape plan could be worked out in the area inside the fence opposite the house on 13 Care Street with Township staff that could be done as part of the land development plan that is in process at this time.

Mr. Turner noted the large photo map shows two residential dwelling on 13 Care Street is that incorrect or is one a garage. Mr. Lucas noted that you are correct. Mr. Wilson noted that the one towards the west of 13 Care Street is actually a garage with a carport. Mr. Turner questioned if there is only one house on that lot and that is on the eastern end of the property. Mr. Wilson answered yes, noting that he incorrectly labeled the residential dwelling at 13 Care Street to the west and it should be labeled as a garage rather than a residential dwelling.

Mr. Lucas noted that he asks for the admission of Exhibit Packet which contains A-1 through A-7 and Exhibit A-8 which is the marked up diagram. Mr. Turner stated so ordered.

Mr. Staub questioned if the Township had a position on this application. Ms. Moran answered no.

Mr. Staub questioned if anyone in the audience wished to be heard on this application. No response was given.

Mr. Hansen questioned the age of the customers who might be using this type of facility. Mr. Gelbaugh questioned if he was talking about the bumper cars. Mr. Hansen answered yes. Mr. Gelbaugh suggested that it would be the same age for the miniature golf course, two years to 80 years old. He noted that the bumper cars are not high impact, as there is an inner tube around it.

Mr. Hansen questioned how you would regulate the age of person using the cars. Mr. Gelbaugh answered that there is a height limit of about 40 inches. Mr. Hansen noted if the cars go about three or four miles per hour you would not have a problem mixing ages and heights at one time. Mr. Gelbaugh answered that he and his wife visited a place in Orlando in October to see the cars as they have a very low impact. He noted that he got dizzy from spinning in circles.

Mr. Staub noted that hearing no further testimony by the applicant, board members, or the audience, the board has 45 days to render a decision relative to this application.

Ms. Cate questioned how late the bumper cars would be open. Mr. Gelbaugh answered up until 11 p.m.

Mr. Hansen moved that Docket #1329 application for DAG, LLP for the public site improvements be denied. Ms. Cate seconded the motion.

Mr. Turner conducted the following roll-call vote: Mr. Fisher, nay; Mr. Hansen, aye; Mrs. Cate, aye; and Mr. Staub, nay. Mr. Turner noted that the motion was to deny but in order to approve it; it must have a majority vote.

Mr. Lucas questioned if there are issues that the mover and seconder have that we could address.

Ms. Cate noted her issue is the hours of operation until 11 p.m. and she would like to see more trees along the fence with 13 Care Street or plantings of some sort. Mr. Lucas noted if the ordinance would require it opposite the bumper pad area only or opposite the house. He questioned if Ms. Cate was talking about most of that area there. Ms. Cate questioned if Mr. Gelbaugh owns the property where the fence is going to be. Mr. Lucas answered that he does. Ms. Cate noted that she would put it on the outside looking into it on the side of the bumper cars. Mr. Lucas noted that you want the landscaping inside the fence facing the bumper cars. He questioned if it would be in the area opposite the bumper car pad. Ms. Care answered yes.

Mr. Lucas suggested that a condition that we work with Township staff and come up with the type of plantings and the exact extent of what would be planted if the Zoning Officer is agreeable to that. Ms. Moran noted requested since the plan is available to have the Board members mark on it what you are interested in having. Mr. Turner noted that it would be good to run it from the eastern property corner at 13 Care Street to the western corner of the bumper pad site. Ms. Cate stated that was fine. Mr. Staub stated that he would have no issues with Township staff, particularly since Ms. Moran knows what the Board's concerns are, having staff work with the applicant regarding the land development plan to ensure that the plantings would be done properly. Mr. Turner noted that we have made that a condition in the past. Ms. Cate noted that it would suite her.

Ms. Moran requested Mr. Turner to repeat his direction again. Mr. Turner noted that it would be from the eastern corner of 13 Care Street to a point lined up with the western end of the bumper car site. Mr. Fisher noted that it would be east of the garage. Mr. Turner noted that we are screening the house not the garage. Ms. Cate agreed. Mr. Staub noted that it would take care of 15 Care Street.

Ms. Cate questioned her Board members what they felt about the time for operation. Mr. Hansen noted that he is not sure if it is a silent bumper car operation or the standard motorized type of vehicle. Mr. Gelbaugh noted that he has a letter from the manufacturer. Mr. Lucas noted that one of the exhibits in the packet is a letter from the manufacturer, Exhibit D in the booklet, where he describes, and if it is approved it would be per the testimony, and it would have to match what is stated in the letter. Mr. Hansen questioned if you are speaking to the decibels level. Mr. Lucas noted that the cars are operated at three to four miles per hour and a 45 decibel level. He noted if this was approved, the standard decision would be to act in accordance with the testimony and this is part of the testimony. He noted that Mr. Gelbaugh would have to show to the Zoning Officer that the cars being used match the information. Mr. Hansen questioned if this would be done before it is constructed or by visiting another site. Mr. Lucas noted that after it is constructed, there would be a matter of bringing in the cars or showing the purchase order from the manufacturer that these are the cars being used for operation so the Certificate of Occupancy could be issued. Mr. Turner noted that he always includes that everything is subject to all the testimony provided to the Board.

Mr. Lucas noted that the purchase order for the cars for that and any business is subject to an inspection by the Zoning Officer to see if it is in compliance. He noted that he could provide notification to show what is delivered matches the purchase order in order to comply with this.

He noted that it would be the obligation of the developer. He noted that the Zoning Officer could verify that what was purchased meets these requirements and what was delivered was what was called for in the purchase order. He noted that it could be part of the approval process. He noted as far as hours of operation, one concept discussed was if you look at the next exhibit in the packet which is Exhibit E, is the elevations of the bumper car building. He noted that the north elevation described faces towards 13 Care Street, also owned by the developer. He noted that it has no doors. He noted that the south elevation faces the miniature golf and batting cages and the east elevation faces towards the opposite building in that direction, and the west elevation faces Care Street. He noted that he would propose that the garage doors on the west elevation be closed no later than 10 p.m. Ms. Cate noted that she was thinking of closing at 10 p.m. so that might work. Mr. Lucas noted if we close those doors, it would block any noise, and even shrieks from the riders going west.

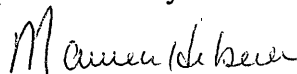
Ms. Cate made a motion to grant the variance for Docket 1329 with the condition that they must close the doors at 10 p.m. in the bumper car building for the west elevation and that they put the plants in as discussed. Mr. Watson Fisher seconded the motion.

Mr. Turner called for a roll call vote: Mr. Fisher, aye; Mr. Hansen; nay; Mrs. Cate, aye, and Mr. Staub, aye.

Mr. Staub noted that the Zoning Hearing Board will take a reaffirmation vote at the next meeting to be held on February 28th. Mr. Turner noted that he will readvertise the hearing and prepare the petition so it could be signed that night.

The hearing ended at 8:20 p.m.

Submitted by:



Maureen Heberle

Recording Secretary